

ESTTA Tracking number: **ESTTA598686**Filing date: **04/15/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Bird & Cronin Inc.		
Entity	Corporation	Citizenship	Minnesota
Address	1200 Trapp Road Eagan, MN 55121 UNITED STATES		

Correspondence information	Gregory Golla Merchant & Gould PC 3200 IDS Center Minneapolis, MN 55402 UNITED STATES ggolla@merchantgould.com,dockmpls@merchantgould.com,sjohnston@merchantgould.com Phone:6123325300
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Registration Subject to Cancellation

Registration No	4361338	Registration date	07/02/2013
Registrant	Jalmar C. Araujo 30 Chelsea St, Suite 810 Everett, MA 02149 USX		

Goods/Services Subject to Cancellation

Class 010. First Use: 1985/01/15 First Use In Commerce: 1985/01/15
All goods and services in the class are cancelled, namely: Orthopedic supports

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BIRD & CRONIN		
Goods/Services	orthopedic products, namely, orthopedic apparatus, devices and instruments for diagnostic and therapeutic use, orthopedic apparatus and instruments, orthopedic belts, orthopedic braces, orthopedic		

	cushions and padding, orthopedic footwear, orthopedic soles, orthopedic support bandages , orthopedic supports , orthopedic walkers, orthopedic casts, orthopedic pillows, orthopedic collars, orthopedic cervical traction kits, orthopedic shoulder immobilizer, orthopedic elbow support and protector, orthopedic belts, orthopedic back cushions, orthopedic wraps, orthopedic supports, orthopedic walkers, orthopedic stabilizers, orthopedic cast boots, orthopedic toe protectors, orthopedic Splints, limb holders, medical restraints, medical elevators, medical slings
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Attachments	bird_20140415141738.pdf(506520 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gcg/
Name	Gregory Golla
Date	04/15/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bird & Cronin Inc.,)	Cancellation No. _____
)	
Petitioner,)	Mark: BIRD & CRONIN
)	
v.)	Registration No. 4,361,338
)	
Jalmar C. Araujo,)	Registration Date: July 02, 2013
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Bird & Cronin Inc. (hereinafter "Bird & Cronin" or "Petitioner"), a Minnesota corporation, located at 1200 Trapp Road, Eagan, MINNESOTA 55121, believes it will be damaged by the registration of the mark shown in Registration No. 4,361,338, registered July 02, 2013, by Jalmar C. Araujo (hereinafter "Registrant"), and hereby petitions to cancel the registration of the mark. The grounds for cancellation are as follows:

1. Registrant's mark registered July 02, 2013. This Petition for Cancellation is timely filed.
2. Registrant registered the mark BIRD & CRONIN in connection with "Orthopedic supports" in International Class 10.
3. Bird & Cronin manufactures and sells a full line of orthopedic supports, among other medical and orthopedic goods.
4. Petitioner adopted the corporate trade name Bird & Cronin Inc. in 1973 and has been using the Bird & Cronin Inc. name and BIRD & CRONIN mark for virtually all of the

various goods and services it offers since at least as early as 1973. Virtually all of Bird & Cronin's products are labeled with the well-known and BIRD & CRONIN house mark.

5. Bird & Cronin Inc., has applied to register the BIRD & CRONIN mark for "orthopedic products, namely, orthopedic apparatus, devices and instruments for diagnostic and therapeutic use, orthopedic apparatus and instruments, orthopedic belts, orthopedic braces, orthopedic cushions and padding, orthopedic footwear, orthopedic soles, orthopedic support bandages , orthopedic supports , orthopedic walkers, orthopedic casts, orthopedic pillows, orthopedic collars, orthopedic cervical traction kits, orthopedic shoulder immobilizer, orthopedic elbow support and protector, orthopedic belts, orthopedic back cushions, orthopedic wraps, orthopedic supports, orthopedic walkers, orthopedic stabilizers, orthopedic cast boots, orthopedic toe protectors, orthopedic Splints, limb holders, medical restraints, medical elevators, medical slings", Application Serial No. 86238937.

6. Petitioner has advertised and promoted its BIRD & CRONIN mark continuously and extensively, and made substantial sales of products and services under said mark. As a result of such continuous use and promotion, the BIRD & CRONIN mark has developed and represents valuable goodwill inuring to the benefit of Petitioner.

7. A picture of Petitioner's webpage displaying the BIRD & CRONIN mark and usage is depicted below:



The design mark of Bird & Cronin is depicted below:



8. In Registrant's application for registration, Registrant submitted a specimen of use utilizing Petitioner's design mark:



9. Upon information and belief and based upon a close review of the specimen of use, Registrant's statement of use was fraudulently made in that Registrant utilized a black and white photocopy of Petitioner's design mark and taped this photocopy to a leg brace having made no use of the mark.

10. Upon information and belief, Registrant merely used Petitioner's logo on a product to create a specimen of use.

11. Upon information and belief, Registrant's specimen of use was fraudulently submitted.

12. There is no issue of priority concerning Registration No. 4,361,338 since Petitioner used its BIRD & CRONIN mark prior to Registrant's July 02, 2013 filing date. Petitioner adopted and commenced use of Petitioner's BIRD & CRONIN mark as a trademark long before Registrant adopted or used the BIRD & CRONIN mark. Petitioner's usage of the term BIRD & CRONIN as a trademark commenced at least as early as 1973, nearly seventeen (17) years prior to Registrant's alleged first use date of January 15, 1985 of the applied for BIRD & CRONIN mark. Petitioner therefore has priority over Registrant with respect to the marks at issue.

13. Registrant's BIRD & CRONIN mark is confusingly and deceptively similar to Petitioner's previously used BIRD & CRONIN mark.

14. Registrant's BIRD & CRONIN mark is identical in sight, sound and commercial impression to Petitioner's BIRD & CRONIN mark.

15. Petitioner's goods/services and Registrant's goods are likely to be promoted in the same channels of trade to the same consumers or class of consumers.

16. Due to the similarity between Registrant's claimed mark, BIRD & CRONIN, and Petitioner's previously used BIRD & CRONIN mark, the closely related nature of the goods and services of the respective parties, customers and potential customers are likely to believe that Registrant's goods originate from Petitioner, resulting in a likelihood of confusion in the marketplace, and damage to Petitioner.

17. The use and registration by Registrant of the mark BIRD & CRONIN for Registrant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Petitioner's previously used BIRD & CRONIN mark, again resulting in damage to Petitioner.

18. Because of the closely related nature of the goods and services of the parties, and the similarity of the marks, use and registration of the term BIRD & CRONIN by Registrant is likely to cause confusion, mistake, or deception that Registrant's goods are those of Petitioner, or are otherwise endorsed, sponsored, or approved by Petitioner for use with Petitioner's goods/services causing further damage to Petitioner.

19. Registrant's use and registration infringes Petitioner's trade name rights in Bird & Cronin.

20. Upon information and belief, Registrant has not used Registrant's Mark in the United States, and has no intention of doing so. Accordingly, Registrant has abandoned its Mark.

21. Registration of the mark shown in Registration No. 4,361,338 will result in damage to Petitioner under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Petitioner asks that its petition to cancel this registration be sustained and that registration of the term BIRD & CRONIN for the goods set forth therein be cancelled.

Please direct all correspondence to:

**Gregory Golla
Scott Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910**

Petitioner herein appoints John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Andrew S. Ehard; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Christopher J. Schulte; William D. Schultz, and all other attorneys of the firm of

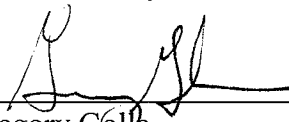
Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark
Office relating to this matter with full power of substitution.

Respectfully submitted,

BIRD & CRONIN INC.

By its Attorneys,

Date: 4-15-2015

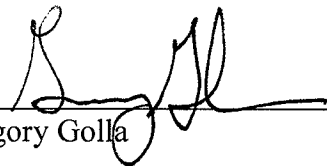


Gregory Golla
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation was served upon Registrant by First Class Mail, postage pre-paid, this 15th Day of April, 2014:

Jalmar C. Araujo
30 Chelsea St, Suite 810
Everett, MASSACHUSETTS 02149



Gregory Golla